

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.**

In the Matter of)
)
Telephone Number Portability)
)
Wireline Competition Bureau Seeks Comment)
on Requests for Waiver or Temporary)
Extension of the Requirement to Provide Local)
Number Portability to CMRS Providers)

CC Docket No. 95-116

To: Chief, Wireline Competition Bureau

OPPOSITION OF VERIZON WIRELESS TO LEC WAIVER PETITIONS

Verizon Wireless hereby files the following opposition to the Petitions for Waiver (collectively, “Petitions”) filed on September 24, 2003, by Franklin Telephone Company, Inc. (“Franklin”), Inter-Community Telephone Company, LLC (“Inter-Community”), and North Central Telephone Cooperative, Inc. (“North Central”) (collectively, “Companies”) of the Companies’ obligations to provide local number portability (“LNP”) to requesting Commercial Mobile Radio Service (“CMRS”) providers.¹

The Petitions should be denied. These Companies have failed to show any semblance of good cause for a waiver of their LNP obligations. Moreover, their claims of exemption under section 251(f) are unavailing, because the inter-modal LNP obligations they seek to avoid were not ordered pursuant to section 251. Other rural carriers have filed strikingly similar petitions in states across the country over the past month. The Commission should clarify that any petitions for relief from the inter-modal LNP requirement must be brought before the Commission, rather

than state commissions, because the Commission has established number portability policy at the federal level, and the inter-modal LNP obligation was imposed under sections 1, 2, 4(i) and 332, not section 251. LECs have been on notice since 1997 that they may need to support LNP within 6 months of request from a competing carrier, and since July 2002 that wireless carriers would be offering LNP in November 2003. There is no justification for carriers to claim that they need more time to get ready for this long-standing mandate. The Commission must stand by its firm finding in its 2002 CMRS LNP forbearance order that LNP is necessary to protect consumers,² which naturally must include consumers who live in rural America.

I. THE COMPANIES HAVE NOT SHOWN GOOD CAUSE FOR A WAIVER.

The Commission may waive a provision of its rules for “good cause shown.”³ “In demonstrating such good cause, an applicant for waiver ‘faces a high hurdle even at the starting gate.’”⁴ The Companies have not met that hurdle here. They claim that requiring them to comply with the LNP requirement would be “unduly burdensome and contrary to the public interest” and that grant of the waiver would “further the public interest.”⁵ The Companies are incorrect on both counts.

First, the Companies claim that requiring them to comply with the LNP requirement would be “unduly burdensome” and that the public interest would be disserved by imposing the costs of LNP on their customers. But the facts do not bear this out. In Exhibit 1 to each of the

¹ *Wireline Competition Bureau Seeks Comment on Requests for Waiver or Temporary Extension of the Requirement to Provide Local Number Portability to CMRS Providers*, Public Notice, DA 03-3014 (rel. Oct. 2, 2003).

² *Verizon Wireless’ Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation*, Memorandum Opinion & Order, 17 FCC Rcd 14972 (2002) (“*Verizon Wireless Forbearance Order*”).

³ 47 C.F.R. § 1.3.

⁴ *Numbering Resource Optimization, Petition of TeleCorp PCS, Inc.*, Order, 16 FCC Rcd 19535, 19536 (2001) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969)).

⁵ Petitions at 2.

Petitions, the Companies provide their line counts as well as their estimates of their costs to implement LNP. Dividing the implementation cost over the subscriber base, and assuming recovery of the cost over only one year, the per-customer monthly cost is only approximately \$0.48 for Inter-Community, \$0.25 for North Central, and \$0.30 for Franklin. If the costs were spread over a period longer than one year (which would seem reasonable under the circumstances), the per-customer monthly cost would be even lower. This is comparable to the information that was on the record regarding the costs that the wireless industry would face to implement LNP and, in that case, the Commission found that the “consumer benefits of LNP justify imposing these costs.”⁶ If it was true there, it is equally true here.

The Companies also claim that implementing LNP presents logistical difficulties and that additional time is needed to complete the task. Again the Companies have failed to present evidence to support their claims. The Companies claim to have contacted their respective switch vendors and to have been informed that deployment would take six months. (The Companies do not, however, attach any substantiating correspondence with the switch vendors.) Significantly, however, the Companies all admit that they received their bona fide requests (“BFRs”) from the wireless carriers six months before November 24. Thus, had the Companies begun LNP implementation on a timely basis, there would be no need for a waiver. In any event, however, the Companies have not shown a factual basis for any waiver at all.

In addition, the Companies’ generic claims of logistical difficulties to implement LNP cannot overcome the strong public interest findings the Commission has made in favor of LNP. The Commission has known since it ordered LNP in 1997 that this mandate presented

⁶ *Verizon Wireless Forbearance Order* at ¶ 29.

extraordinary logistical difficulties for carriers,⁷ but it has consistently concluded that LNP still should be implemented. The Companies' claim is thus baseless. They should not be allowed to shield themselves from the competitive benefits that the Commission found would flow from LNP.

Finally, the Companies claim that the public interest would not be served by requiring them to implement LNP because there is no evidence that their customers wish to replace their wireline service with wireless service. The relevant question, however, is not whether the LEC customers wish to replace their wireline service with wireless, but rather whether they wish to port their wireline numbers to wireless carriers. The Commission consistently has concluded that carrier requests for LNP are the best evidence of demand for portability.⁸ The Companies have received proper BFRs from wireless carriers, and they should be required to honor them.

II. SECTION 251(f) IS IRRELEVANT TO INTER-MODAL PORTABILITY.

In addition to their request for waiver of the LNP requirement, the Companies take pains in the Petitions to point out that they qualify as rural telephone companies or “two percent carriers” pursuant to section 251(f) of the Act, suggesting that it exempts them from the LNP requirement. Section 251(f) provides for exemption from 251(c) requirements (for rural telephone companies)⁹ and 251(b) and (c) requirements for “two percent carriers.”¹⁰ In finding that the public interest is served by wireline customers having the ability to port to CMRS carriers, however, the Commission relied on other authority – in particular, sections 1, 2, 4(i),

⁷ The Commission has acknowledged that the mobile nature of wireless service makes the logistical difficulties of implementation even greater for CMRS carriers than for LECs. *See, e.g., Verizon Wireless Forbearance Order* at ¶¶ 24-25.

⁸ *See, e.g., Numbering Resource Optimization*, Fourth Report & Order, 18 FCC Rcd 12472, 12476 (2003).

⁹ 47 U.S.C. § 251(f)(1).

¹⁰ 47 U.S.C. § 251(f)(2).

and 332 – and not on sections 251 and 252.¹¹ In imposing the LNP requirement on CMRS carriers, the Commission acknowledged that it lacked authority to do so pursuant to section 251, because CMRS providers are not LECs.¹² The Commission specifically included CMRS carriers “in our mandate to provide long-term service provider portability ... pursuant to our authority under sections 1, 2, 4(i), and 332 of the Communications Act of 1934. *This mandate applies when switching among wireline service providers and broadband CMRS providers, as well as among broadband CMRS providers....*”¹³

Thus, because the mandate for inter-modal portability was not imposed based on section 251(b) or (c), the exemptions and suspensions provided in 251(f) are irrelevant. Indeed, the Commission’s implementing rules contain no exemption for the carriers enumerated in section 251(f). Thus, the Companies must provide LNP to CMRS carriers pursuant to the BFRs they have received.

III. THE COMMISSION SHOULD ADDRESS ALL WAIVER REQUESTS.

The Commission should also use this proceeding to rule that state proceedings, pursuant to section 251(f) or any other provision, are *not* an appropriate vehicle for LECs to seek suspension or modification of the *inter-modal* LNP requirement. A number of LECs already have filed such petitions with state commissions.¹⁴ Allowing individual state proceedings could

¹¹ It is immaterial whether the Commission in fact possessed such authority; the pivotal point relative to the Petitions is that the Commission did *not* impose the intermodal LNP requirement pursuant to section 251.

¹² See *Telephone Number Portability*, First Report & Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352 at ¶¶ 152-153 (1996) (“*LNP First Report & Order*”)

¹³ *LNP First Report & Order* at ¶ 155 (emphasis added). See also *Cellular Telecommunications & Internet Ass’n and Cellco Partnership d/b/a Verizon Wireless v. FCC*, No. 02-1264 (D.C. Cir. 2003), Brief for Respondents at 7.

¹⁴ North Carolina: Alliance of North Carolina Telephone Companies (Sept. 10, 2003). Ohio: Orwell Telephone Company (Sept. 18, 2003); Columbus Grove Telephone Company (Sept. 18, 2003). Oregon: SCS Communications and Security Inc. (Sept. 23, 2003); Oregon Telecommunications Association (Sept. 23, 2003). Texas: Nortex Telcom, L.L.C. (Oct. 14, 2003); W.T. Services, Inc. (Oct. 14, 2003); Muenster Telephone Corporation of Texas d/b/a Nortex Communications (Oct. 13, 2003); Peoples Telephone Cooperative, Inc. (Oct. 13,

yield a patchwork of different LNP implementation deadlines and standards, and would be inconsistent with the Commission's conclusion that "Congress has determined that this Commission should develop a national number portability policy."¹⁵

Moreover, to allow state proceedings regarding the scope of the inter-modal portability requirement would be inconsistent with the Commission's jurisdictional basis for imposing the requirement. As described in section II, above, the FCC ordered the inter-modal LNP requirement pursuant to sections 1, 2, 4(i), and 332. Thus, it is beyond the authority of state commissions to abrogate the inter-modal LNP requirement in proceedings under section 251(f) or any other provision.

In addition, from a policy perspective, it would make a mockery of the Commission's deadlines for inter-modal LNP to require wireless carriers to litigate separate proceedings before state commissions to enforce the requirement against each LEC that has to date or may hereafter challenge its obligation. Such proceedings would extend well beyond even the May 24, 2004 deadline for wireless carriers to implement LNP outside the top 100 MSAs and also would impose an undue and unreasonable burden on wireless carriers.

2003); Comanche County Telephone Company, Inc. (Oct. 13, 2003); Cumby Telephone Cooperative, Inc. (Oct. 13, 2003); Eastex Telephone Cooperative, Inc. (Oct. 13, 2003); Brazos Telephone Cooperative, Inc. (Oct. 13, 2003); South Plains Telephone Cooperative, Inc. (Oct. 13, 2003); Mid-Plains Rural Telephone Cooperative, Inc. (Oct. 13, 2003); Colorado Valley Telephone Cooperative, Inc. (Oct. 13, 2003); West Plains Telecommunications, Inc. (Oct. 13, 2003); West Texas Rural Telephone Cooperative, Inc. (Oct. 13, 2003); Five Area Telephone Cooperative, Inc. (Oct. 13, 2003); Wes-Tex Telephone Cooperative, Inc. (Oct. 13, 2003); ENMR Telephone Cooperative, Inc. (Oct. 13, 2003); Santa Rosa Telephone Cooperative Washington: Washington Independent Telephone Association (Sept. 24, 2003).

¹⁵ *LNP First Report & Order* at ¶ 36.

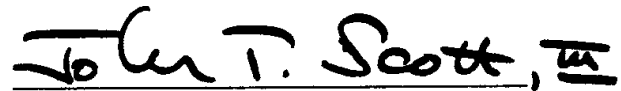
IV. CONCLUSION

For the foregoing reasons, the Commission should deny the Petitions. The Companies have failed to show good cause for a waiver, and section 251(f) does not apply. Moreover, the Commission should take accountability for implementing LNP by assuming responsibility for acting on all waiver petitions. Wireless carriers should not be required to litigate LECs' LNP obligations in individual proceedings before state commissions.

Respectfully submitted,

VERIZON WIRELESS

By:

A handwritten signature in black ink that reads "John T. Scott, III". The signature is written in a cursive style with a horizontal line underneath the name.

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